

Draft Regulations

Frequently Asked Questions

Revised March 18, 2013

General

Q: Why haven't you recommended that the County establish a zoning system? This would solve many of our land use conflicts that directly relate to incompatibility.

A: Zoning can be a very useful tool as a means to reasonably regulate land use. However, it is not desired by many citizens of unincorporated Benton County and isn't absolutely necessary provided that Benton County establish a good alternative land use regulatory system that reasonably protects property values and quality of life of all citizens while allowing abundant freedom and flexibility to establish businesses in the county that provide jobs and tax revenues. We believe we have developed such a system based on compatibility predicated on performance standards and land use classifications. The system does not have a zoning map or any geographically defined zones so it is not zoning.

Chapter I

Q. I am used to the "Blue Book" that has been used since 1998. Will these regulations introduce new controls or regulations?

A. The new Ordinance incorporates the provisions outlined in the "Blue Book." It is very much in line with the same provisions. However, new sections have been added to make this a comprehensive document that aims to be user friendly and ensures consistency. For example, instead of a single approach to development, the new Ordinance provides for 3 categories- minor, standard and major developments and has introduced clear exemptions that do not require review by County Officials.

In order make it easier, staff will refer to the Blue Book in the text of this Ordinance.

Q. Section 1.4 D- refers to the effect of the Ordinance on existing uses and structures. Is this grandfathering?

A. Yes, all legally established existing uses that maintain their status quo will be grandfathered. This Ordinance clearly provides the circumstances where a grandfathered situation may be changed due to a proposed development on-site.

Q. In §1.4(G), reference is made to minimum requirements. It further notes that this Ordinance provides for discretion on the part of a County official or body, that discretion may be thoughtfully and judiciously....." I have concern with use of the term 'discretion'. Please clarify the intent.

A. The term discretion refers to the ability of the decision making body to utilize common sense approach to specific situation during their review in the absence of planning tools, such as, noise ordinance or other measurable performance measures. Thus, in specific situations where

nuisance abatement, environmental concerns, or compatibility issues are a concern, the decision makers may require additional requirements. In addition, this ordinance provides options for Appeals by the applicant should they not agree to the decision of the Planning Board. This is detailed in Section 2.8.

Q. Section 1.6- Goals and Objectives, under Residential Development refers to protecting residential areas from incompatible land uses. This sounds like zoning. Shouldn't a hog house be allowed near residential? This is anti-business and too much regulation.

A. Typically, zoning is used as a planning tool to establish compatible uses within prescribed zones/districts. The draft regulations do not aim to create distinct zones/districts. However, it does aim to address goals and objectives established in the existing regulations and the 2011 County Land Use Guide.

Protection of sensitive land uses is an essential goal to maintain the quality of life in the community. While setbacks or adequate buffering/screening may mitigate some of the nuisances arising from an incompatible land use, it may not be sufficient. All such cases are reviewed on a case by case basis on their own merits. Planning staff conduct their research and the Planning Board reviews all development to ensure conformity to the established viable and stable character of the area and seek to protect the overall character of the area, if possible. Finally, the issue of whether a hog farm and residences should be located next to each other relates often to who came first. If a hog farm is the first use established, then a proposed residential development should have no gripe with it. However, if a hog farmer wants to create a new hog farm adjacent to an established an existing subdivision, we may seek some buffering between the two uses.

Q. I have concerns that the regulations reduce my property rights. I have an existing property and I am not sure if it complies with the current regulations and now I will have to comply with a new set of regulations. This is unreasonable.

A. The regulations provide a fair system that defines non-conforming uses and the conditions under which they should be allowed to continue. Just because you have a use that is designated as grandfathered or nonconforming does not mean you can't fully use it as it has historically been used. Nonconforming uses are simply uses that are no longer in complete alignment with the latest regulations. What then happens is that if the user wants to expand or change the use to another use, then s/he would then be required to come in for approval. But if no change is planned, then it can be business as usual for as long as the owner wishes. The Planning staff is available to meet with concerned citizens and review their situation.

Q. Will this ordinance make all the existing properties to be grandfathered? I have an existing property what does it mean for me? Is this another way of government controlling our businesses?

A. Grandfathering is a tool that will ensure that businesses may continue to operate and maintain status quo. However, should the business choose to expand or undertake a change of use, it will create a baseline for future development on-site. Planning staff is available to meet with property owners. A new section 2.7 provides details of Non Confirming Uses. Planning staff makes all efforts to balance the rights of citizens who wish to establish uses on property that is

consistent with the established character of the area and others who wish to use the property for business purposes only without regard to the surrounding land uses.

Q. Will this ordinance nullify private agreements, covenants or easements?

A. This ordinance is not intended to nullify any easements, covenants, or any other private agreement unless the Planning Board determines that the provisions are not inconsistent with this ordinance, then the private provisions may be enacted but shall not be enforced by the County.

Q. Is any change proposed to the interfamily land transfers? Will it be deemed a subdivision now? This will be very onerous and we oppose the ordinance. Why is frontage on county road now required?

A. Interfamily land transfers are not deemed as subdivisions. They shall be determined as a tract split provided that such splits result in no more than four separate tracts and all possess frontage on a county road.

The requirement to ensure frontage on County Road helps to create publicly accessible property without any need for deed restrictions. This will help alleviate a number of conflicting situations where a future land owner may not wish to uphold a private agreement for access. This will also prevent land locked parcels.

Q. I have two current planning applications under review. One has been submitted and awaiting review and the other is currently under consideration by the Planning Board. Do I have to re-apply once the regulations are passed?

A. See section 1.9-Transitional Rules. All applications which are under review and pending final action by the Planning Board, as of the effective date of these regulations shall be reviewed and approved in accordance with the ordinance in effect before the effective date of this ordinance. All complete applications received by the submission due date just before the effective date of the regulations also will be reviewed under the regulations that are in effect before the adoption of these regulations.

Q. What do I need to submit for a development application? This has always been very confusing.

A. This ordinance has simplified the requirements for all the 13 types of development proposals in a table format- Table 1.2. The table provides a comprehensive list of all required documents relative to the type of application. Each required document is further supplemented with the information required in the document. Also, symbols are used to identify if a document is 'required' or may be required by the Planning Board.

* Required

◆ May be deemed necessary by the Planning Board

Q. How do I use Table 1.2? It lists a number of required documents.

A. All one has to do is to find the column corresponding to the type of proposed development and then find the * or ♦
For example, while the legal description of the project is required for most development proposals, construction plans prepared by a registered engineer is required for informal plats only.

Q. What is a Municipal Planning area Letter? Is this more of the government bureaucracy?

A. On the contrary, municipal planning area letter is a useful tool that will help streamline the review process by clearly establishing the jurisdiction for review. This in turn will assist the applicants with their timelines and will prevent any confusion with regards to the jurisdiction. At the pre consultation stage, before submission of application, planning staff will provide a 'Municipal Planning area Letter' template to the applicant so that they may clearly establish the jurisdiction of review and submit the application accordingly.

Q. I am having difficulty finding certain words/ provisions. How would you address it?

A. Planning staff will be adding a detailed Index which will make it easier to find certain words/provisions.

Chapter II – Administration and Enforcement

Q: Why isn't an economic hardship a reasonable reason to seek a variance?

A: There are several answers to this question. First, many economic hardships are self-imposed in that a property may have been acquired cheaply due to it being unbuildable and this characteristic that makes it unbuildable would not be a hardship because it should be known by the buyer in advance and the principle of Caveat Emptor is directly applicable here. If a property owner needs more living or working space but a building addition would require a variance, then this is an example of economic hardship since the owner could find a property with more space elsewhere and certainly knew how much space was in place in the property needing such a variance.

Q: Why are you imposing a sunset provision? This is too much regulation.

A: Sunset provisions are intended to insure that projects are built to a contemporary standard and if an approved plan is not built within a reasonable amount of time, then the conditions of approval applied to the project may soon become obsolete or at least outdated in regard to laws that address health, safety, nuisances, or good building and development practices. A sunset provision requires a project to be completed in a specific timeframe or require it to reapply for a new approval based on the latest provisions.

Q: Why the restrictions on re-application? I should be able to apply as many times and as frequently as I want to.

A: Each application requires a significant amount of staff time and effort to research, review, and develop recommendations on. If a denied application were permitted to reapply after each meeting in which they were denied, this would be an unreasonable burden on staff related to a single application. It

also prevents applicants who want to get approved a sloppy or clearly unreasonable project to submit each time with incremental changes forcing staff to determine what the changes were each time. Reapplication restrictions force applicants to submit well-developed projects and complete applications.

Q: Why do you have a section on non-conforming uses. Isn't everything built before this ordinance goes into effect grandfathered?

A: One of the biggest areas of confusion with the existing planning regulations is that there is nothing that addresses how grandfathered (non-conforming) uses are to be handled. This includes whether and under what conditions they can be expanded, changed to another conforming or non-conforming use, rebuilt after fire, or ceased for a period of time and re-established. The objective is to over a period of time make every commercial property conforming to the regulations and not allow non-conformities perpetually without restriction. We believe that we've developed a fair system the defines what a non-conformity is and under what conditions it should be allowed to continue.

Q: Your section on Regulations in Relation to Municipalities is confusing. What exactly must an applicant do in a municipal planning area?

A: It is confusing in part because that is the way the state laws in regard to planning areas is in Arkansas. Each city may have a different set of land uses that it wishes to approve and the County must try to determine, to the best of our ability, to learn each of these sets of standards and work with municipalities to make sure customers are not unduly burdened or confused.

Chapter III- DEFINITIONS

ACCESSORY STRUCTURES – Structures which are on the same parcel of property as the principle structure and the use of which is incidental to the use of the principle structure (such as garages and storage sheds).

Q: Does the definition of ACCESSORY STRUCTURES (see above) include barns, sheds, guest homes, ect.

A: An accessory structure is any structure over 120 sq. ft. located on the property which is not the main structure used by the property owner. This definition would in fact cover sheds, cabins, etc. Guest homes would be reviewed by planning staff to determine if they should be considered accessory structures. Barns would be considered agricultural structures.

AGRICULTURAL BUILDING – A structure designed and constructed to house farm implements, hay, grain, poultry, livestock, or other horticultural products. This structure shall not be a place of human habitation or a place of employment where agricultural products are processed, treated, or packaged, nor shall it be a place used by the public.

Q: Often there are apartments in barns. Will these types of dual uses still be allowed? This seems like a lot of limits on what can and can't be done in an agri building. What about one time things like auctions or someone coming to buy livestock?

A: Any residential or additional use associated with a barn or other agricultural structure will be reviewed by the planning and building staff in order to determine what type of review will be necessary

for approval. A single person buying livestock will be allowed but auctions are considered commercial uses and must be reviewed by planning staff.

BUFFER – Buffer area shall include but will not be limited to planted vegetation, natural vegetation, berm, or manufactured barrier such as a wall or screening fence with concealing properties to a height of up to seven (7) feet.

Q: Why are we including height here, can't a screen be any height?

A: That is correct. Berms may be whatever height is necessary to provide proper screening between different land uses. Staff examines a variety of factors including land use intensity and nuisance factors in defining adequate buffer height and material type.

CONSTRUCTION SPOIL means material of any nature which is removed or displaced during the construction or grading process

Q: This is not clear what qualifies as construction spoil? Does this definition include materials such as dirt, construction materials?

A: Any materials which remain on a construction site such as wood, metal, or gravel debris, as well as mined or harvested materials shall be included in this definition. This definition is intended to protect property owners and the community at large. Staff would like to prevent situations in which developed sites are not properly cleared or cared for.

CONTAMINATED means containing harmful quantities of pollutants

Q: Who determines what a pollutant is?

A: We have included a definition of pollutant in this chapter. Should there be a question over a particular material we will refer to the Arkansas Department of Environmental Quality in order to determine the status of a material. Staff will also refer in storm water situations to the definition of pollutants defined in the court ordered MS4.

KEY BOX – A secure device with a lock operable only by a fire department master key, and containing building entry keys and other keys that may be required for access in an emergency.

Q: Isn't this also referred to as a Knox Box? Do we have a definition of Knox Box?

A: We will add a definition for Knox Box. A Knox Box, known officially as the KNOX-BOX Rapid Entry System is a small, wall-mounted safe that holds building keys for fire departments

HARD SURFACE – Surfaces made from compactible materials such as SB-2, gravel, etc.

Q: What are some examples of hard surfaces? Would packed earth be included as a hard surface?

A: Asphalt, Concrete, and gravel are considered hard surfaced.

OFF-SITE NUISANCES – Include dust, smoke, odors, noise, vibration, light, glare, heat, etc. that affects property other than that on which it originates.

Q: Who decides what these are? At what levels are they unacceptable? Why do we need this?

A: Planning staff examines each land use application in order to determine if a potential nuisance is constituted by any proposed activities on a site for adjacent property owners. Acceptable nuisance levels may be determined by common sense, past history of similar activities, as well as appropriate measurements and metrics. Off –site nuisances are considered in planning board applications in order to protect property owners from offensive materials which may affect their properties.

PLANNING BOARD SERVICE OFFICER – The Planning Board Service Officer is the primary planning staff member with authority to sign off on administrative approvals and shall serve as the enforcement officer for violations of the Planning Regulations of Benton County, AR. The Planning Board Service Officer shall be the Director of the Department of Planning and Environmental Services or their designee.

Q: Please explain this position? Is this a new position? How will your staff handle this position along with other duties?

A: This position is usually included in the Planning Director duties. It is not a new position. The County Judge may also appoint any staff member he feels appropriate for the job.

We do not have a definition for non-conformity

Q: Does the definition of fertilizer include animal manure/litter in the definition of fertilizer?

A: The definition of fertilizer is based on our storm water ordinance but can be adjusted to include all types of fertilizer.

Q: Does the no adverse impact principle apply to farmers if adding to existing farming operations?

A: No all agricultural activity is exempt from this principal.

Q: Is it possible to include agri-tourism into the definition for temporary uses?

A: Yes agri-tourism events including hay rides, corn mazes, and seasonal tours should be included in the definition for temporary uses or may be included in the section on temporary uses

Chapter IV – General Requirements of Development

Q: You have proposed a system of four land use types. Isn't this just a way to introduce zoning to Benton County?

A: Not at all. Zoning does use land use in determining what uses should be allowed in zones but we are not proposing any zoning districts for Benton County. In fact, a system for land use regulation has been

recommended by a conservative policy institute based on compatibility which is what they consider a better alternative to zoning. This is a system that I believe fits Benton County very well as a largely rural and agricultural community and basic land use simplifies this system to make it viable to implement here.

Q: Why are you mandating a minimum lot size?

A: Firstly, the County adopted Land Use Guide calls for a minimum lot size of one (1) acre. Also, most lots in the county are or will be on septic to serve the development and a minimum one (1) acre is often necessary for a septic tank and field, a secondary field, and sufficient distance from these two improvements from a water well.

Q: Why are you establishing performance standards? This is just too much regulation and an awful lot like zoning.

A: We understand your concerns and while performance standards can be used in zoning (i.e. Lane Kendig's concept of "Performance Zoning"), the reason for suggesting their use in Benton County is precisely to avoid zoning. Zoning frankly would be a far easier and simpler tool to reasonably regulate land uses to avoid incompatibility. However, lacking zoning, the best alternative would be to develop a robust performance-based system to insure that nuisances can be controlled or abated. We have recommended a less robust "primitive" performance system that lacks much of the measuring metrics that a more "precision" type of performance system would have where we actually require strict measurements for specific nuisances. The reason we've recommended this less robust system is due to cost to implement and the hardship it could place on applicants. This is why we have to tie the system to land use since land use categories often suggest certain nuisances.

Q: Why are you suggesting a Development Review Committee? Isn't this just a glaring example of an additional layer of government?

A: Not at all. The idea for a Development Review Committee is based on two things:

1. Improving Customer Service – We believe that it will shorten the time line for applicants and get decisions made sooner, and
2. Coordinating Review Agencies – We are looking for a way to get better feedback from the appropriate agencies we need to provide comments on applications.

Presently, we spend a lot of time seeking feedback from the various agencies that we require comments from such as the Road Department, Health Department, fire departments, and so on. Some agencies respond quickly and some slower or sometimes not at all. Some responses are detailed and others cryptic. We recommend establishing a regularly scheduled meeting here in the Planning office where representatives of each agency would attend and hear a presentation by the applicant and make comments so that the applicant would be able to make the most comprehensive and accurate application possible. This is intended to shorten time frames for review since their application will be much more complete and require fewer or no revisions.

Chapter V – Subdivision Regulations

Q: Section 5.3, APPLICABILITY, Section B. of the draft defines division of parcels (more than 2 tracts) of less than 25 acres as a subdivision. What is the logic for prohibiting divisions into tracts smaller than 25 acres? It is very common for owners to want to split or sell tracts of five (5) acres in size. Is it necessary to require a tract to be larger than 25 acres to avoid subdivision requirements? It seems that there is a gap in the requirements between an Informal Plat and a Subdivision which these smaller than 25-acre tracts fall in to.

A: The idea is to prevent the far too common practice of people trying to establish de facto subdivisions without going through the process and installing the required infrastructure. We do offer an Informal Plat for those who want a more rustic and less developed project at a lower cost. There are people who establish subdivisions of 25 acres or more in this part of the country and there is an aviation subdivision in Arizona of 50-acre lots.

Q: What exactly is Section 5.3, APPLICABILITY, Section D. referring to? In other words, what plat would you be referring to if you are drafting a new subdivision, tract split, or other type of survey?

A: Concerning the provision, *"No land may be subdivided through the use of any legal description other than with reference to a plat approved by the Planning Board in accordance with this Ordinance."* Simply this is saying that subdivision requires a plat approved by the Planning Board.

Q: Section 5.11.C.3.a - Please define "correct" legal description. If the remaining portion of the parent tract is more than 10 acres and is not required to be surveyed, how do you prepare a "correct" legal description of the remainder without surveying it? The only way to provide a description of the remainder (if you don't survey the entire parent) is to use the existing legal of the parent and add a LESS & EXCEPT for the portion being surveyed/split out, which would not be a "correct" legal.

A: The legal description would be textual and presumably already exist while the survey itself graphically would not be required. To split out the smaller tract, it is assumed that the legal description can be revised accordingly. Staff understands the point regarding the term "correct" and will look for alternatives

From Terry Booth: I think planning guidelines should avoid "correct" as a modifier. I don't think it adds anything meaningful. I have enough trouble with "legal". I don't know any authority granted to County Administration to determine if a description is "legal". All the Assessor's office can do is determine if the description can be located, mathematically closes, and is separate from adjacent parcels for assessment purposes. If we need a definition of whatever modifier we use for description, I suggest using the language from the statutes governing the duties of the County Assessor.

Q: Section 5.11.B.2 - Should you add "unless the tracts being divided are each equal to or larger than 25 acres"? Without this language, it seems to conflict with Section 5.3B.

A: This is correct and will be added.

Q: Section 5.11.E.3 surveyors request elimination of the location map. They ask why a location map is necessary when you have detailed legal descriptions AND addresses of owners shown on the plat? They note that location maps are difficult to create due to lack of accurate and up-to-date maps, program compatibility with CAD program, paper space on the plat and are redundant since you

already have legal descriptions and addresses.

Answer: Staff agrees. We think we can dispense with them on tract splits, lot line adjustments, etc. However, I believe it would be best to retain them for LSD and subdivisions.

From Terry Booth: Speaking as the mapping manager, I would agree the location map (sometimes called a vicinity map on plats) is not necessary for us to map a tax parcel. I think most of us doing GIS mapping look for parcels numbers to start with, or in the case of your plats, I just “go to” a coordinate pair.

Q: From Buckley Blew on December 21, 2012: I am not opposed to the idea. All of my crews are fully equipped with GPS. My concern is not for my company but for the entire surveying community. In your e-mail, you mention two surveyors that do not have/use GPS who work extensively in Benton County. This one requirement would essentially eliminate their ability to provide a large portion of their services in Benton County. You should not only be looking at the surveying companies that you know but at all the surveyors that are licensed to do work in Arkansas. A few questions:

Basic Response: There has never been a more accurate way to perform a land survey than GPS (Global Positioning System). Measurements with GPS are accurate to within 1/16th of an inch.

Q1: What is this data being used for?

A1: The primary purpose for requiring State Plane Coordinates is to allow the County to improve the accuracy of the parcel maps.

Currently when the public accesses the GIS maps on the Official Benton County website, it is a simple matter to display the parcel map layer or many other layers over the aerial photographs of the county. What quickly becomes apparent to the user is that the parcel boundaries do not “line up” with the aerial photographs. The reason for the mismatch is the result of the different origins for our image layers, i.e. aerial photographs, and our data layers, which includes Section maps, parcels, city limits, etc. Aerial photographs are georeferenced to the State Plane Coordinate System using surveyed ground control points located around the county which meet stringent accuracy specifications. The aerial photographs are the most accurate and precise layer we have. On the other hand, the Section-Township-Range layer which is the basis of most of the data layers was manually digitized from paper maps of various sources and vintages. Accuracy of the data layers varies widely throughout the county, but has been found to differ from aerial photographs by as much as 200 feet in the northeast part of the county.

Requiring state plane coordinates gives the county, and ultimately the public, a cost effective method of realigning our data layers to more accurately match our aerial photographs.

Q2: How does it benefit the public for us to provide this data?

A2: As outlined in A1: above, the public benefits by having more accurate maps of the county at their disposal. For example, when property owners in rural areas can see a good match between their tax parcel and their visible boundaries on aerial photos, they can have increased confidence that they are not being assessed for their neighbor’s pole barn. With the current inaccuracies in our parcels layer, buildings are associated with the wrong parcel more than we would like.

Q3: How does it benefit the County?

A3: Nearly all departments of the Benton County government depend on the GIS maps developed and maintained by the county. As the County grows, the problems with the accuracy of our data layers are becoming more pronounced. By requiring survey plats to have ties to state plane coordinates, we have the ability to improve the quality of mapping data for GIS users throughout County governmental departments. The direct beneficiaries within the county include the Assessor, who is charged by law to *"make ... a correct and pertinent description of each tract or lot of real property in his county."*; the Sheriff's Office for mapping criminal activity; the County Clerk's office for keeping accurate maps of voting precincts, school district boundaries, city boundaries, and political subdivisions; the Health Department for location of septic systems on parcels; the Planning Department for flood plain management, [subdivisions], and other environmental issues; and 911 Administration for mapping street addresses.

In addition, governments for the 21 incorporated cities and towns in Benton County as well as Northwest Arkansas Regional Planning are direct consumers of county GIS data. As such, those entities also benefit from improved accuracy.

Q4: Who will be reviewing this data for accuracy?

A4: The GIS/Mapping Manager for the Assessor's office and the GIS Staff have the responsibility for incorporating cadastral and parcel boundary data into the County's databases and are charged with maintaining the integrity and availability of the data for the benefit of County government and the public.

As a practical matter, if a coordinate pair does not conform to other information on the plat or to our aerial photos, as in the case of a transcription error, we annotate the digital file of the plat, and attempt to notify the surveyor or our findings but we do not reject the plat. This is our current practice for any material error we encounter.

Q5: As I am sure you are aware there are numerous ways to collect this type of data. What order of accuracy will be required? Some of these ways are a lot less accurate than others.

A5: This is an important question. The County digital cadastral data is subject to the Cadastral Mapping Standard, SS-40, effective date 7/20/2004, published by the Arkansas State Land Information Board. The standard states, *"The relative accuracy of the 'digital representation' shall fall within 5% of the deeded or platted dimension."* As noted above, this level of accuracy (66' on a standard 40-acre quarter-quarter section boundary) is insufficient for the accuracy the County needs for the benefit of GIS users. We want the relative dimension accuracy to fall within 0.5% of deeded of the deeded or platted dimension, or approximately 6' on a standard 40-acre quarter-quarter section boundary. This is a much less stringent standard than the Standards of Practice for Property Boundary Surveys and Plats promulgated by the State Surveyor. The working assumption is that a plat provided by a Registered Professional Surveyor exceeds our accuracy requirement.

Q6: Will you require us to report our scale factor, convergence angle, opus report, grid or ground distances, etc. or will you simply accept what numbers are on the plats?

A6: No. We do not require such information. We only need a statement of the basis of bearing, e. g., Arkansas State Plane Grid” which nearly all plats have. We prefer to have such information included, but it is not required.

Q7: Legally, the order of importance in survey monuments and calls puts coordinates at the very bottom. It becomes dangerous to ask us to provide this data and for us to publish this data without having some sort of common control to tie into. I have seen people use Google Earth to get a lat/long and then go to the NGS website and use vertcon to convert it to State Plane Coordinates, I've seen people use a handheld GPS, I've seen them use a GIS grade GPS to collect this information. None of these methods should be relied upon to publish data on a survey plat. However, there is no authority that could oversee and/or regulate this planning requirement. Another example is the Trimble network tower that Bentonville electric department has, (I believe your office uses this with a Trimble rover) it can reach all the way to Siloam Springs (20 miles) and provide you with coordinates for the points you shoot in. However, Trimble and the dealer that installed that specific unit would tell you not to use it for survey grade data farther then 5-7 miles from the base.

A7: We recognize that there are various sources and methods for collecting the data we are asking for. Please refer to the discussion of mapping versus survey standards. You have brought up a point that needs to be addressed. We may need to define a provision for a waiver of the requirement for State Plane Coordinates cannot be obtained due to tree canopy, multipath, or other problem.

Q8: If I can make a suggestion it would be this, try and establish some level of funding to be able to pay surveyors for true State Plane Coordinates on either controlling corners (section corners and 1/4 section corners) or pay them a fee to set control monuments. Have them provide you with a corner card which provides all of the information I talked about above. The State of Arkansas did this with state monuments; I believe they paid \$150 or \$250 for each monument. I bet if it was even a minimal fee you would have your control network established within a couple of years. Once control is readily available then you could make this a requirement. If you put this out to bid to do all at once, it would most likely be cost prohibitive.

A8: We think your suggestion is a good one, and will consider ways of compensating for surveyors such services.

General Answer: *These are good points raised and staff will conduct some additional research to determine justifications or alternatives. We look forward to working closely with surveyors and engineers to establish a reasonable system.*

Q: In §5.4(B) you describe criteria for unbuildable lands. How did you come up with these criteria because it appears arbitrary?

A: Because we wanted to. Based on good land use practices, best management practices, research and analysis by land use engineers and other experts, and comparable provisions in other communities.

Q: Why do subdivisions need to be a minimum of five (5) acres? (§5.4(E)(1))

A: With a three lot minimum (3 acres), plus road infrastructure (0.3 acres typically), plus right-of-way and stormwater detention facilities typical of a subdivision, five (5) acres was deemed to be a reasonable minimum to ensure that the proper infrastructure could be accommodated.

Q: Why are you prescribing minimum block lengths and other design standards for subdivisions? Isn't the market a better determinant of design and aren't you limiting creativity by being so rigid?

A: Minimum design standards for provisions like block lengths are informed by public safety and by traffic management and transportation engineering best practices and guidelines. These and other technical design criteria are often included to facilitate safety and security, the provision of adequate public services and utilities, and other factors that lead to a well-designed community.

Q: If I want to come in and discuss my subdivision in a pre-application review must I still have the jurisdiction authority sheet signed by the municipality? Why do I have to go to the city and then the county I don't understand why jurisdiction is so difficult to figure out?

A: Arkansas operates with ETJ areas. This means that five miles from a city's boundaries they still review subdivisions. These boundaries can be fluid due to annexations and the authority a city takes on. If a city has a road plan then they have the authority to review subdivisions in their ETJ. Smaller cities without a road plan will not review subdivisions in their ETJ. However the County may not always be informed when a city passes a road plan and develops the authority to review subdivisions. Thus, it is appropriate to check with cities before applying for a subdivision review. If this is not complete, the Planning Board may find that they do not have the authority to review a project much further in the planning process.

Q: My subdivision has a grade of 17% percent for three hundred feet. The rest of the road flattens out and has a grade of less than 10%. I have the approval of the local fire chief stating that he can get fire vehicles in and out of the subdivision. Why won't you consider a variance for anything over 15% if emergency vehicles can access the property?

A: International Fire codes prevent street grades of over 12%. We have made a provision to allow variances requests up to 15% for difficult to develop properties. We cannot allow variances to international fire code regulations. FYI Bella Vista only allows 12% variances

Q: I work for a bank. We required a property on which a preliminary plat was approved but no improvements were made. We would like to complete the subdivision now. Will be required to re file the preliminary plat? No extension was applied for.

Alternately Q: I work for a bank we recently acquired property in which the final plat was approved. No lots were sold and we acquired the property as a whole. The property was approved in the county and the bond was posted by the previous owner. The property has since been annexed into the City of Bella Vista. An extension was applied for and we are still in that extension period. Can we recover the bond if we complete all improvements agreed to in the final plat approval? Will we be required to bring the subdivision back through the City of Bella Vista Planning Department?

Q: I am a developer in the County and have used the Blue book all these years. I have concerns that the draft subdivision regulations are very length.

A: The draft subdivision regulations incorporate a number of criteria and guidelines. It amalgamated 9 existing chapters for ease of usage. This chapter has been organized to provide guidelines for subdivision design, subdivision layout and design, subdivision platting procedures, surety to warrant performance (new), and other types of subdivision, such as, informal plat subdivision, plat

modifications, tract splits, Development Master Plan and Planned Unit Developments. Therefore, although the chapter is length, it is very comprehensive.

Q: Why is there a change in the minimum subdivision size?

A: The minimum subdivision size has been increased from 1 acre to 5 acres in keeping with the requirements of the Health Department for adequate provision of on-site septic tank and lateral fields and other safety considerations for a good subdivision design standard.

Q: As a developer I am, concerned with the Master Road Plan detailed in Table 5.3. – Minimum Design Standards for Subdivision Streets.

A: Table 5.3 has been substantially modified to suite the street typology in Benton County. In the Blue Book, this table was primarily based on Living Units and referenced to density. The reference to medium density or low density may be more suited to urban areas. While in the actual subdivision practice in the County, the street typology has been adopted, such as,

Primary Street (Type 1) - Residential Collector

Secondary Residential Street, Type 2- urban for >1 d.u/acre

Secondary Residential Street, Type 3- local/suburban for 0.5-1 d.u/acre

Secondary Residential Street, Type 4- local/rural for <0.5 d.u/acre

Further, the table provides clear information regarding maintenance, right of way width, lane width, traffic lanes, surface type, min. sight distances and other consideration. This provides a comprehensive road design guidelines and requirements that will help the developers in subdivision design.

Q: Why is a new section for Surety to warrant performance, added in the new draft? This is onerous.

A: This section has been introduced to address the gap in the current use of performance bonds. While a useful tool to ensure development occurs as approved, performance bonds have proved to be difficult to administer and follow up for release of bonds. Therefore, this new section outlines the process and requirements for ease of use.

Q: Why a requirement is added for Minimum standard for access in informal plat subdivisions? Why are easements or private drives not allowed anymore?

A: Easements and private drives have been very difficult to enforce and has resulted in law suits amongst property owners. Therefore, in order to prevent a situation where a property may be land locked, a standard for access has been introduced that requires a dedicated private road for access for more than 3 parcels.

Chapter VI – Commercial and Industrial Site Plan Review

Q: Section 6.8, CUMULATIVE IMPROVEMENTS seems to suggest that people might use incremental improvements to get around your regulations. Don't you trust people to do the right thing?

A: Either intentionally or not, incremental additions of development can be one way that property owners can avoid complying with these regulations. Even if built incrementally, projects of a certain scale can and often do have impacts to the road system, to neighbors, to the environment, and in other ways. Staff often counsels applicants that if they plan to make additional changes or additions in coming years that it might be easier to get plans approved in full up front freeing them to go ahead with their projects without the time and expense burden of subsequent approvals down the line. Also, even if owners get buildout approvals up front, if they want to make changes to their approved plans, this is certainly easier, and often administrative in scope.

Q: The section on Amendments suggests that you are going to nickel and dime people to death if they want to make a slight change or addition to their project. Why do you want to do this?

A: That is not our intention at all. There are a number of changes that people can make to their property and related to their approved projects that are exempted by these new regulations. However, some changes by people are substantive and may have a small but noticeable impact on their neighbors, traffic, parking, ingress, or some other criteria. Therefore, for some changes we do ask people to come back to the Board or just to speak to staff and get a minor revision to their approved plans so that the file will be up to date in terms of what has been approved. This is also important since if a neighbor complains about something related to the business expansion, if it went through proper channels, then it becomes easy to defend.

Q: Section 6.12 PROJECT REVIEW SUMMARY is confusing. Is this another layer of standards or just a repeat of what you've already noted earlier? Is it necessary?

A: It probably doesn't need to be in a separate section and we could move it to a better location and note what it is better.

Q: I have applied for a minor site plan review and believe my small project meets all of the requirements of such a review. I want to add a 250 sq. ft. building to my existing previously approved LSD. Yet I have been told by Planning Staff that I have to submit to a more extensive review. If I meet all the qualifications of a minor site plan review, why do I have to do this?

A: There are many reasons that a project may require additional review though an applicant might feel that no additional review is required. For example, Staff might find during an inspection that additional improvements have been made to the property without Planning Board approval. In this case, Staff might ask that the entire site be reviewed. Staff may also find that previously approved elements of the site plan have not been implemented by the applicant or may have been implemented in a way that was not approved by the Planning Board. In these cases staff often re-reviews the project to make sure that it meets all previously approved stipulations as well as review any additional improvements not previously approved but installed on site.

Q: I am applying for an amendment to a site plan. I have recently purchased a business and want to make sure that I can make the changes I need to without going through planning. I want to renovate the existing building without adding square footage. I also want to update the exterior and pave the parking area. This is all basic upkeep so why would I need to go through planning review.

A: You probably know that as a new business owner, it's a good idea to research the history of the property, what approvals have been received, and what might be needed for approvals prior to

purchasing a property. We recommend that prior to purchasing a property, prospective buyers consider meeting with Planning Staff to understand the regulations as they may apply to the property and also see if there has been a previously approved site plan. It may be that the previous owner did not properly implement all the stipulations of approval. If this was the case than as the new property owner you may be responsible for updating your site to meet all stipulations of approval before any additional changes can be made.

Q: I may want to acquire additional adjacent property at another point in time to expand my currently approved business. However I have no idea about the type or scope of additions. I do know that I want to expand at some point in the future. Should I go ahead and lay out areas of future expansion even though I am not sure what they might look like or think that might change based on cash flow?

A: If you do not yet have control of the property, I would not submit any expansion plans to Planning. Once you do have control of a piece of property you may wish to include in the expansion of your business, you may want to submit plans for future expansion if you are fairly certain that you plan to go forward and have a fairly good idea of what you plan to do to the site. In particular, if you expect to expand your business in several phases, it may benefit you to submit plans for all phases if you're fairly certain about your plans. Showing future phasing may also help the Planning Board advise you as the applicant about issues which may affect the property as it is expanded. For example, understanding future plans it may help with additional access issues. For example if you know your business is growing you may need additional access. It would be best to plan for those accesses ahead of time in order to better understand the site layout.

Q: Why is compatibility being introduced? This is zoning.

A: Not at all. Zoning refers to establishing specific geographic zones that restrict the types of uses that can be located in the zone. Benton County is not proposing any kind of zoning system. What we are proposing is an improved system of property compatibility based on what we already use. Our definition of compatibility is, *"A condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition."* Note that without compatibility, Benton County could not provide any effective form of land use regulatory system to protect existing property owners and their investments. Compatibility is the basis of performance measures which is a system of land use regulation recommended by a wide range of conservative policy analysts. Performance measures utilize compatibility between various land uses without the use of zoning districts.

Q: Why are the new regulations restricting landscape buffers to very specific criteria?

A: The Table 6.9 provides suggested plants that are suited for the soil types in the area and also provides options for establishing buffers using appropriate plant materials. However, the applicant may consult a local landscape professional for other suitable options. Planning staff encourages the use of native plants that are appropriate for the climate and soil type.

Chapters VII to X

Q: Regarding Chapter VII, Section 7.6, IN-HOME OCCUPATIONS, isn't there any small commercial activity that the over-regulated citizens of Benton County can engage in without finding the long arm of local government in their lives? Why is this necessary?

A: We understand the concern and the purpose of at least defining what an in-home occupation is relates to a common issue that we face in the Planning office. Often a citizen will come in to the office unsure of whether their home-based business needs to come through commercial site plan review with the County. In many cases they do not but the threshold for that has always been fuzzy. The purpose of this section is to clearly identify the line and to also create a new category of more impacting in-home occupations that can be administratively reviewed but not have to go to the Planning Board as a commercial site plan. The hope is that these clarifications will make it easier for those with an in-home occupation to know whether they need to seek any approvals or not.

Q: Chapter VII, Special Development Regulations is new in the Ordinance. What is the purpose and scope of the new regulation that have been introduced in this chapter?

A: This is a new chapter that aims to compile special development regulations, such as, development of mobile home parks, telecommunication facilities, wind energy facilities, signs, temporary uses. Most of the above noted special development uses were already contained in the Blue Book. New regulations, pertaining to In-home occupation, wind energy, and agricultural tourism operations have been introduced. The idea for this chapter is to place all special development types in one chapter where new ones can be added if necessary.

Q: Chapter VIII, Stormwater Pollution Prevention, Grading, and Erosion Control is a new chapter. Why is this being added to the Blue Book?

A: Chapter VIII is indeed a new chapter but stormwater regulations have been in place in Benton County since 2009 and this chapter aims to incorporate Court Order C-2009-80, dated January 30, 2009, in the regulations. We felt it useful and good customer service to try to incorporate as many development-related County ordinances into this draft as possible so that it was all coordinated and in one place. It is important to note that these regulations apply only to the properties in the MS4 areas of Benton County.

Q: Chapter X, Flood Damage Prevention is a new chapter. What is the purpose and scope of the new regulation that have been introduced in this chapter?

A: Chapter X replaces the current Chapter XIV in the Blue Book and is largely unchanged.